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11 UNITED STATES DISTRICT COURT  
 12 DISTRICT OF NEVADA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CESAR FONTANELLI-ROJAS,

17 Defendant.

18 Case No.: 2:20-mj-00282-VCF

19 ORDER

20 Stipulation to Extend Deadlines to  
 21 Conduct Preliminary Hearing and  
 22 File Indictment (First Request)

23 IT IS HEREBY STIPULATED AND AGREED, by and between Nicholas A.  
 24 Trutanich, United States Attorney, and Kimberly M. Frayn, Assistant United States  
 1 Attorney, counsel for the United States of America, and Wendi Overmyer, Assistant  
 2 Federal Public Defender, counsel for Defendant CESAR FONTANELLI-ROJAS, that the  
 3 Court schedule the preliminary hearing in this case for no earlier than 90 days from the date  
 4 of the filing of this stipulation. This request requires that the Court extend two deadlines: (1)  
 5 that a preliminary hearing be conducted within 14 days of a detained defendant's initial  
 6 appearance, *see* Fed. R. Crim. P. 5.1(c); and (2) that an information or indictment be filed  
 7 within 30 days of a defendant's arrest, *see* 18 U.S.C. § 3161(b).

28 This stipulation is entered into for the following reasons:

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FILED	RECEIVED
ENFORCED 04/20/20	SERVED ON
COUNSEL/PARTIES OF RECORD	
APR 20	
BY:	DEPUTY
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	

  

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COUNSEL/PARTIES OF RECORD	
APR 21 2020	
BY:	DEPUTY
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	

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- 1       1. The United States Attorney's Office has developed an early disposition  
2 program for immigration cases, authorized by the Attorney General pursuant to the  
3 PROTECT ACT of 2003, Pub. L. 108-21.
- 4       2. The early disposition program for immigration cases is designed to: (1) reduce  
5 the number of hearings required in order to dispose of a criminal case; (2) avoid having  
6 more cases added to the court's trial calendar, while still discharging the government's duty  
7 to prosecute federal crimes; (3) reduce the amount of time between complaint and  
8 sentencing; and (4) avoid adding significant time to the grand jury calendar to seek  
9 indictments in immigration cases, which in turn reduces court costs.
- 10      3. The government has made a plea offer in this case that requires defendant to  
11 waive specific rights and hearings in exchange for "fast-track" downward departure under  
12 USSG § 5K3.1. This offer will be withdrawn if it is not timely accepted before this matter is  
13 indicted and before a preliminary hearing is held.
- 14      4. Under Federal Rule of Criminal Procedure 5.1(c), the Court "must hold the  
15 preliminary hearing within a reasonable time, but no later than 14 days after the initial  
16 appearance if the defendant is in custody . . . ."
- 17      5. However, under Rule 5.1(d), "[w]ith the defendant's consent and upon a  
18 showing of good cause—taking into account the public interest in the prompt disposition of  
19 criminal cases—a magistrate judge may extend the time limits in Rule 5.1(c) one or more  
20 times . . . ."
- 21      6. Furthermore, under the Speedy Trial Act, 18 U.S.C. § 3161(b), "[a]ny  
22 information or indictment charging an individual with the commission of an offense shall be  
23 filed within thirty days from the date on which such individual was arrested or served with a  
24 summons in connection with such charges."

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1       7. Defendant needs additional time to review the discovery and investigate  
2 potential defenses to make an informed decision as to how to proceed, including whether to  
3 accept the fast-track plea agreement.

4       8. Accordingly, the parties jointly request that the Court schedule the  
5 preliminary hearing in this case no sooner than 90 days from today's date.

6       9. Defendant is in custody and agrees to the extension of the 14-day deadline  
7 imposed by Rule 5.1(c) and waives any right to remedies under Rule 5.1(c) or 18 U.S.C.  
8 § 3161(b), provided that the information or indictment is filed on or before the date ordered  
9 pursuant to this stipulation .

10      10. The parties agree to the extension of that deadline.

11      11. This extension supports the public interest in the prompt disposition of  
12 criminal cases by permitting defendant to consider entering into a plea agreement under the  
13 United States Attorney's Office's fast-track program for § 1326 defendants.

14      12. Accordingly, the additional time requested by this stipulation is allowed  
15 under Federal Rule of Criminal Procedure 5.1(d).

16      13. In addition, the parties stipulate and agree that the time between today and  
17 the scheduled preliminary hearing is excludable in computing the time within which the  
18 defendant must be indicted and the trial herein must commence pursuant to the Speedy  
19 Trial Act, 18 U.S.C. § 3161(b) and (h)(7)(A), considering the factors under 18 U.S.C.  
20 § 3161(h)(7)(B)(i) and (iv).

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1           14. This is the first request for an extension of the deadlines by which to conduct  
2 the preliminary hearing and to file an indictment.

3 DATED this \_\_\_\_ day of April, 2020.

Respectfully submitted,

**NICHOLAS A. TRUTANICH**  
**United States Attorney**

/s/ Wendi Overmyer

Assistant Federal Public Defender  
Counsel for Defendant Cesar  
Fontanelli-Rojas

/s/ Kimberly M. Frayn

**KIMBERLY M. FRAYN**  
Assistant United States Attorney

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1  
2                   **UNITED STATES DISTRICT COURT**  
3                   **DISTRICT OF NEVADA**

4                   **UNITED STATES OF AMERICA,**

Case No.: 2:20-mj-282

5                   Plaintiff,

[Proposed] Order on Stipulation to  
Extend Deadlines to Conduct  
Preliminary Hearing and  
File Indictment

v.

6                   **CESAR FONTANELLI-ROJAS,**

7                   Defendant.

8  
9                   Based on the stipulation of counsel, good cause appearing, and the best interest of  
10 justice being served; the time requested by this stipulation being excludable in computing  
11 the time within which the defendant must be indicted and the trial herein must commence  
12 pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(b) and (h)(7)(A), and Federal Rule of  
13 Criminal Procedure 5.1, considering the factors under 18 U.S.C. § 3161(h)(7)(B)(i) and (iv):

14                   IT IS THEREFORE ORDERED that the preliminary hearing currently scheduled  
15 on 5/4/20 at the hour of 4:00 p.m., be vacated and continued to 7/22/20 at the  
16 hour of 4:00 pm Courtroom 3D

17                   DATED this 21<sup>st</sup> day of April, 2020.



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19                   **HONORABLE CAM FERENBACH**  
20                   **UNITED STATES MAGISTRATE JUDGE**

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